



Texas Radiation Advisory Board

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April 28, 2004

Mr. Albert Hawkins
Executive Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, TX 78711

Dear Commissioner Hawkins:

I understand you are approaching a decision on the reorganization of the legacy agency, the Texas Department of Health (TDH) and its Bureau of Radiation Control (BRC). This is the subject of a previous letter to you (February 5, 2004). I also understand that the Texas Radiation Advisory Board (TRAB) is likely one of many "interested parties" that has petitioned you for some semblance of the status quo. It is my sincerest hope that I can rise above the "interested party" status and disabuse you of the current path that is being taken with the BRC.

Your intentions and those of the state legislators with regard to the reorganization of the state health services are entirely laudable. State leaders and lawmakers have a responsibility to Texans to ensure that state agencies maximize services and support while minimizing cost wherever possible. In light of those goals, I offer these comments for you to consider in making decisions and have requested to visit with you in person regarding the TRAB's concern about dividing the radiation control program along functional lines.

While the combination and integration of existing state health services along with the use of improved information technologies will vastly improve your ability to deliver services in some sectors, the Bureau of Radiation Control (along with several other safety and health organizations in the current TDH) does not deliver *services* to licensees or registrants, and it would be highly improper to treat them as if they do. The business model that is being used for this reorganization effort appears to fit a service-delivery and call-center type business very well; however, the model does not fit a health and safety licensing, compliance, and emergency response model in the least.

The customers of the BRC are the residents of the state of Texas. As such, the Bureau is entrusted with the responsibility of ensuring that individuals who seek to use or produce sources of radiation in their enterprises do so in a *safe* and *secure* manner. Texans do not come to the BRC to *request* this service. These safety and health services are executed at the behest of state lawmakers and under an Agreement between the Governor and the Nuclear Regulatory Commission (NRC), which is likewise acting in the interest of public health and safety. Further, the BRC is funded 100% from fees collected from licensees and registrants, grants and federal contracts, and most significantly, at *zero-cost* to the state.

In short, given the apparent plan under consideration by the Health and Human Services Commission to dismantle the Bureau of Radiation Control — one of the best state radiation control programs in the country, if not *the best* — *the TRAB cannot help but conclude that such a dismantling of this critical program will adversely impact the health and safety of both radiation workers and the general public.*

The TRAB is maintaining this position for the following three reasons (recommendations follow):

- 1. No Benchmark Has Been Identified.** Notwithstanding the absence of any definitive or detailed information provided to the stakeholders during the review and comment period of the transition phase, there does not appear to be *any* benchmark to which the state's consultants, Deloitte and Touche, are measuring the current organizational transition for radiation control. To the contrary, state governments that have tried this approach (Kentucky, Louisiana, and Nebraska) with their radiation control programs have been unsuccessful in their attempts. Nebraska and Kentucky tried this in 1994, and have since reunified their radiation control programs. Louisiana is in the midst of "functionalizing." So far, reports are that it costs more for radiation control. (Louisiana's emergency response expenses increased over 30% after functionalization.)

Louisiana's experience appears to be 180 degrees out from the state's goal of cost savings; however, we appear to be proceeding in the same direction of the failed attempts of Nebraska and Kentucky, and the not-so-promising efforts of Louisiana. Has the consultant looked at what caused these failed transitions so that the state is not throwing good money after bad?

One of the nation's best benchmarks for state radiation control programs is that which the proposed reorganization would dismantle.

The Texas Commission on Environmental Quality does split their programs into licensing and compliance functions. However, my experience has been that it appears that greater in-house coordination is required to complete tasks; this increases the number of "handoffs" and steps to complete tasks (such as rulemaking), thus making longer (and costlier) business cycles. This may also create more time intensive involvement of committee-work since functional

organizations have to be formed through committees in an activity-based organization (e.g., the activities of “licensing,” “compliance,” “enforcement,” and “emergency response”).

- 2. Organization of Public Health & Safety Assurance Activities is Poorly Conceived.** The division of the regulatory program into functional areas fails to take advantage of synergy of commonality and collaborative efforts. Additionally, it is a model that will have adverse effects on maintaining staff expertise and exceptional performance. The grouping of business activities from various functional areas is based solely on an activity (licensing, for instance), even though there may be *no* common elements between “licensing” in radiation control and “licensing” in retail foods. These organizations have never had the need nor occasion to work together. What service is provided to the state by separating them apart from their logical organization to one that has no common bonds other than a common activity? Can you identify an occasion where these proposed organizational groupings have had the need to work together in the fashion that is being crafted?

The business of radiation control requires an integrated, collaborative approach that develops an essential radiation safety infrastructure for our society. The tasks involved are not ministerial[†] – they require safety evaluations of the highest degree and they require collaboration of many disciplines and functions. For instance, the team approach (i.e., licensing, enforcement, and inspection) is frequently employed when working with complex radioactive material issues in determining whether or not to issue a license or when to take enforcement action or release contaminated properties.

For the maximum synergy of expertise necessary to deal with today’s complex radiation safety issues, staffing is of the utmost importance. To divide the staff into activity-based units will dilute the emergency response capabilities as well as the basic and essential radiation safety operations. Individuals with health physics (radiation safety) expertise are few and far between and the current program experiences a high turnover rate and great difficulty in recruiting this caliber of individual because state salaries are not competitive with the private and federal sectors. The state staffing crisis in radiation control has been the subject of several TRAB letters to state officials. Adverse consequences to staffing relate to

[†] In Licensing, for example, “*Ministerial licensing*” is a simple process whereby a license is issued after specific items are submitted (i.e., license application, fee, CEUs, etc.) and without the exercise of personal judgment or discretion or without the need for special technical expertise to process and evaluate the qualifications of the requestor. On the other hand, “*Discretionary licensing*” is a very thorough process of application review using independent technical judgment to assure that all aspects of a proposal are adequate to protect public health and safety. This type of license review may involve multiple persons with varied technical abilities reviewing proposed facilities, processes, procedures, equipment and users for adequacy. A license is only issued if all are acceptable. This type of licensing requires persons with specific technical expertise.

possible reduction of expertise, and undesirable changes in personnel performance.

The mid-level management, targeted for reduction throughout the department, contributes heavily to the knowledge base and expertise of the radiation control operation in Texas. To remove this level of management would be counterproductive because those individuals do far more than “manage.” They contribute on a daily basis to the safe operations of nuclear activities in this state.

Specifically in the area of emergency response, BRC's team, practiced and experienced over 23 years, is the *only* full scale nuclear response team that the state has to offer in case of a terrorist attack with radioactive materials. Dividing these individuals into various organizational structures dilutes their ability to work together to the best of their combined abilities. Because of the serious nature of their work, it is inappropriate to ask them to work in an organized structure that does not offer them the best opportunity for success in the event they are called upon to respond to a nuclear attack or incident. Nor should the public expect less than the best planning and coordination efforts the state can provide — again at *zero cost to the state*.

Further, and as raised in the February 5th letter, whom will you hire to manage the disparate group that you plan to assemble in, for example, your licensing organization? Where will you find a person who is competent (through education and experience) in radiation control licensing, and is also competent in licensing for drugs and medical devices, retail and wholesale foods, dairy, shellfish, lead, asbestos, product safety and general sanitation? I will save you the effort and tell you that you will not find a person possessing the knowledge, training and experience to effectively manage such an operation and ensure Texans that all functions are being properly executed. If you could find such a person, the state could not afford to pay the salary this person would command.

How does a manager who knows little or nothing about what an employee is supposed to know and do in their job 1) mentor a new employee, 2) determine which potential employee should be hired or who is a qualified candidate for a given position? These are very basic questions that need to be considered in the proposed organization. In my estimation, you are setting up a model of ineffective management that is borne out by many published case studies. Again, Deloitte and Touche should be able to show specific instances and organizations where their proposed *activity-based* approach has worked with a multi-disciplinary safety and health organization.

Because unique radiation protection functions are not common to other health programs, we believe that duplication cannot be eliminated nor a dollar savings be achieved by reorganization along *activity-based* lines.

- 3. State Costs Will Increase.** The advertised intent of the reorganization is to reduce the state's cost of doing business. Since the BRC is supported almost entirely by fees from licensees and registrants, those entities will rightly demand that fees be reduced in the "streamlined" organization. This is an issue the TRAB will follow very closely and could support should the planned reorganization come to pass.

In order for the new organization to perform the same functions that the BRC is currently executing, several groups from several different organizations will now have to come together to perform that work, involving more layers of management and longer cycle times for agreements/decisions to be made among multiple organizations. In short, longer hours and more people to complete a given task mean *higher* costs, not lower.

If Texas cannot demonstrate that it can continue to carry out its Agreement State duties, the NRC could ultimately take over many of the state radiation control functions. Since NRC license fees are generally higher in all cases than state license fees, the net result would be cost increases to entities engaged in the use of radioactive materials or radiation-generating devices, ultimately raising costs for the consumer while removing monies from state coffers. This is a *lose-lose* proposition for the state and all Texans.

Finally, and most importantly, a word about societal costs. In the post-9/11 era, the BRC is faced with a very different set of operating assumptions. The prime assumption is that individuals and groups exist that are seeking to gain access to radioactive materials to do harm to Americans. As has been said on the national level by Secretary Ridge, "[paraphrasing] we have to be right 100% of the time, the bad guys only have to be right one time" to wreak havoc on our citizens, our society and our economy.

The efforts that you and your staff are currently engaged in to trim the cost of Texas government could actually be creating a dysfunctional agency that can no longer keep focused on its critical mission of keeping radioactive materials out of the hands of terrorists. A failure in this area could create enormous societal costs. If the state budget is in trouble now, wait to see what one or two terrorist attacks with radioactive materials might do to it.

Commissioner Hawkins, we cannot afford to lose sight of this mission. The road from *penny-wise* does not end at *pound-foolish*; it ends at *malfeasance*. I do not use that word lightly. You need to think very carefully about what steps you are being advised to take with regard to reorganizing public safety and health functions — and specifically radiation control.

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To conclude, the single business model for the reorganization of the state health services is not adequate to address the broad spectrum of functions that the existing agencies perform. A two-pronged approach might be most suitable where health service delivery and public safety and health assurance functions are contemplated.

In closing, our recommendation continues to be that a united radiation control program is in the best interest of radiation protection in Texas. This is achievable in a department organized along truly *functional* (or programmatic) lines.

My final statement on the review and comment period for this reorganizational activity is that Texas decision-makers should take no comfort in either the process or the volume of comments that were generated given how the information on this process absolutely lacked any specificity regarding the cutting and parsing of existing agencies.

Please contact me if you need any further information to aid you in making your decisions. I look forward to meeting with you in person to address any questions or concerns that you may have.

Very truly yours,

Original signed by:

Michael S. Ford, C.H.P.
Chair

cc: Representative Warren Chisum
Legislative Oversight Committee Members